

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Epixtar
Communications Corp. for Registration as an
Interexchange Carrier Telephone Corporation
Pursuant to the Provisions of Public Utilities
Code Section 1013.

Application 03-01-016
(Filed January 14, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING MOTION TO COMPEL**

On August 4, 2003, Epixtar Communications Corp. (Applicant) filed a motion to compel discovery. Applicant alleges that the Commission's Consumer Protection and Safety Division (CPSD) refused to respond to its data requests. Specifically, Applicant requests that CPSD be compelled to provide the following:

- All evidence that Applicant is not fit to operate in California.
- All evidence that Applicant did not fully disclose all violations or administrative enforcement actions that it or any affiliate has experienced as of the date its application was filed.
- All evidence relating to CPSD's claim, made at the July 8, 2003 prehearing conference, that William D. Rhodes, Jr. has been before this Commission in other guises.

In addition to the above, the applicant asks that it be awarded \$7,602.50 in attorneys' fees for the preparation of its motion.

CPSD responds that it is not required to respond until it serves its exhibits in this proceeding. It also says that to require it to respond earlier would place additional burdens on its staff while it is attempting to perform its investigation.

The basis for the allegations CPSD has made so far in this proceeding appears to be substantially covered by Applicant's second and third requests. Therefore, the first request need not be addressed by CPSD at this time. Since the information sought in the second request appears to have been provided as an attachment to CPSD's protest, no additional response will be required at this time. The response to the third request, however, has not otherwise been provided. At the prehearing conference, CPSD made the allegation that Rhodes has previously been before the Commission. This allegation was not raised in CPSD's protest. Therefore, it is appropriate for CPSD to provide the information on which the allegation was based. In order to move the proceeding along, and to allow CPSD to use its resources efficiently, I will not require CPSD to provide additional responses to discovery at this time. If and when CPSD serves its report in this proceeding, it will provide Applicant with a copy of all documents upon which its report is based at the same time. To the extent that CPSD believes that some of the documents should not be released to Applicant or made public, it may file an appropriate motion.

As to Applicant's request for attorney fees, discovery matters are a routine element of proceedings before the Commission. Applicant is in effect asking the Commission to pay for part of its expenses in seeking a certificate of public convenience and necessity from the Commission. As a result, I will deny the request.

Therefore, **IT IS RULED** that:

1. The motion to compel, filed by of Epixtar Communications Corp. (Applicant) on August 4, 2003, is denied except as follows.
2. Within seven business days, the Consumer Protection and Safety Division (CPSD) shall provide Applicant with a copy of any documents, in its counsel's possession on or before July 8, 2003, that formed the basis for its allegation at the prehearing conference that William D. Rhodes, Jr. has been previously involved in proceedings before the Commission. To the extent that such documents are readily accessible by the public, CPSD need only identify the documents and where they can be found.
3. If and when CPSD serves its report in this proceeding, it shall provide Applicant with a copy of all documents upon which its report is based at the same time. To the extent that such documents are readily accessible by the public, CPSD need only identify the documents and where they can be found.

Dated August 15, 2003, at San Francisco, California.

/s/ JEFFREY P. O'DONNELL
Jeffrey P. O'Donnell
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Motion to Compel on all parties of record in this proceeding or their attorneys of record.

Dated August 15, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.